

### Article 3.

#### Fundamental Changes.

##### **§ 54B-30. Conversion from State to federal association.**

Any State savings and loan association, stock or mutual, organized and operated under the provisions of this Chapter, may convert into a federal savings and loan association in accordance with the provisions of the laws and regulations of the United States and with the same force and effect as though originally incorporated under such laws, and the procedure to effect such conversion shall be as follows:

- (1) The association shall submit a plan of conversion to the Commissioner of Banks, and he may approve the same, with or without amendment, or refuse to approve the plan. If he approves the plan, then the plan shall be submitted to the members or stockholders as provided in the next subdivision. If he refuses to approve the plan, he shall state his objections in writing and give the converting association an opportunity to amend the plan to obviate such objections or to appeal his decision to the Commission.
- (2) A meeting of the members or stockholders shall be held upon not less than 15 days' notice to each member or stockholder. Notice can be made either by mailing such to each member or stockholder, postage prepaid, to the last known address or by the board of directors causing to be published once a week for two weeks preceding such meeting, in a newspaper of general circulation published in the county where such association has its principal office, a notice of the meeting. It shall be regarded as sufficient notice of the purpose of the meeting if the notice contains the following statement: "The purpose of this meeting is to consider the conversion of this State-chartered association into a federally chartered association, pursuant to the laws of the United States." An appropriate officer of the association shall make proof by affidavit at such meeting of due service of the notice or call for said meeting.
- (3) At the meeting of the members or stockholders of such association, such members or stockholders may by affirmative vote of a majority of votes or shares present, in person or by proxy, resolve to convert said association to a federal savings and loan association. A copy of the minutes of the meeting of the members or stockholders certified by an appropriate officer of the association shall be filed in the office of the Commissioner of Banks. The said certified copy when so filed shall be prima facie evidence of the holding and the action of the meeting.
- (4) Within a reasonable time after the receipt of a certified copy of the minutes, the Commissioner of Banks shall either approve or disapprove the proceedings of the meeting for compliance with the procedure set forth in this section. If the Commissioner of Banks approves the proceedings he shall endorse the certified copy of the minutes, and shall issue a certificate of his approval of the conversion and proceedings and send the same to the association. Such certificate shall be recorded in the office of the Secretary of State and in the office of the register of deeds of the county in which the association has its principal office, and the original shall be held by the association. If the Commissioner of Banks disapproves the proceedings he shall note his disapproval on the certified copy of the minutes and notify the Commission and

the association of his disapproval. The association may appeal a disapproval to the Commission.

- (5) Within 60 days after approval of the proceedings by the Commissioner of Banks, the association shall file an application, in the manner prescribed or authorized by the laws and regulations of the United States, to consummate the conversion to a federal association. A copy of the charter or authorization issued to such association by the federal regulatory authority, or a certificate showing the organization or conversion of such association into a federal savings and loan association, and upon such filing with the Commissioner of Banks the association shall cease to be a State association and shall be a federal association.
- (6) Whenever any such association shall convert into a federal savings and loan association it shall cease to be an association under the laws of this State, except that its corporate existence shall be deemed to be extended for the purpose of prosecuting or defending suits by or against it and of enabling it to close its business affairs as a State association, and to dispose of and convey its property. At the time when such conversion becomes effective, all the property of the state association including all its rights, title and interest in and to all property of whatever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the federal association, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the State association; and the federal association as of the effective time of such conversion shall succeed to all the rights, obligations and relations of the State association. (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 5; 1989, c. 76, s. 6; 1989 (Reg. Sess., 1990), c. 806, s. 1; 2001-193, s. 16.)

#### **§ 54B-31. Conversion from federal to State association.**

Any federal savings and loan association, stock or mutual, organized and existing under the laws and regulations of the United States and duly authorized to operate and actually operating in North Carolina may convert into a State savings and loan association operating under the provisions of this Chapter, with the same force and effect as though originally incorporated under the provisions of this Chapter, by complying with the rules and regulations of the federal regulatory authority, and also by following the procedure as set forth in this section:

- (1) The federal association shall submit a plan of conversion to the Commissioner of Banks. When such plan, either with or without amendment, has been approved by the Commissioner of Banks, it shall be submitted to the members or stockholders of the association as provided in the next subdivision.
- (2) A meeting of the members or stockholders shall be held upon not less than 15 days' notice to each member or stockholder. Notice can be made either by mailing such to each member or stockholder, postage prepaid, to the last known address or by the board of directors causing to be published once a week for two weeks preceding such meeting, in a newspaper of general circulation

published in the county where such association has its principal office, a notice of the meeting. It shall be regarded as sufficient notice of the purpose of the meeting if the call contains the following statement: "The purpose of this meeting is to consider the conversion of this federally chartered association to a State-chartered savings and loan association, pursuant to the provisions of the laws of the State of North Carolina." An appropriate officer of the association shall make proof by affidavit at such meeting of the due service of the notice or call for said meeting.

- (3) At the meeting of the members or stockholders of such association, such members or stockholders may by affirmative vote of a majority of votes or shares present, in person or by proxy, resolve to convert said association to a State association. A copy of the minutes of the meeting of the members or stockholders, certified by an appropriate officer of the association, shall be filed with the Commissioner of Banks, accompanied by a conversion fee. The certified copy when so filed shall be prima facie evidence of the holding of and the action taken at the meeting.
- (4) Within 30 days after the approval of the proceedings by the Commissioner of Banks, the association shall file with the Commissioner of Banks, the Secretary of State, and the register of deeds of the county where such association intends to operate a copy of the certificate of incorporation of such association, signed by at least seven directors. The certificate of incorporation shall conform to the provisions of the laws of this State. The Secretary of State and the register of deeds of the county where the association has its principal office shall not issue or record the certificate of incorporation until authorized to do so by the Commissioner of Banks. Upon receipt of a copy of the certificate of incorporation the Commissioner of Banks shall cause to be made a careful examination and investigation of the facts connected with the conversion of the association, including an examination of its affairs generally and a determination of its assets and liabilities. The reasonable cost and expenses of the examination and investigation shall be paid by the association. If it appears that the association, if converted, will lawfully be entitled to conduct business as a State association pursuant to the provisions of this Chapter, the Commissioner of Banks shall so certify to the Secretary of State and the register of deeds in the county in which the association is located, who shall thereupon issue and record such certificate of incorporation. Upon issuance and recordation of the certificate of incorporation the association shall file with the appropriate federal regulatory authority a certified copy of same. Upon such filing, the association shall cease to be a federal association and shall be converted to a State association.
- (5) Upon conversion, all the property of the federal association, including all its rights, title and interest in and to all property of whatsoever kind whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the State association, which shall have, hold, and

enjoy the same in its own right as fully and to the same extent as if the same was possessed, held or enjoyed by said federal association; and such State association shall be deemed to be a continuation of the entity and the identity of said federal association, operating under and pursuant to the provisions of this Chapter, and all rights, obligations and relations of said federal association to or in respect to any person, estate, or creditor, depositor, trustee or beneficiary of any trust, and to or in respect to any executorship or trusteeship or other trust or fiduciary function, shall remain unimpaired, and the State association, shall by operation of this section succeed to all such rights, obligations, relations and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every such right, obligation, trust and relation in the same manner as if such State association had itself assumed the trust or relation, including the obligations and liabilities connected therewith. (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 6; 1985, c. 659, s. 4; 1989, c. 76, s. 7; 2001-193, s. 16.)

**§ 54B-32. Simultaneous charter and ownership conversion.**

(a) In the event of a State charter to federal charter conversion, when the form of ownership will also simultaneously be changed from stock to mutual, or from mutual to stock, the conversion shall proceed initially as if it involves only a charter conversion, under G.S. 54B-30. After the association becomes a federal association, then the federal regulatory authority shall govern the continuing conversion of the form of ownership of such newly converted association.

(b) In the event of a federal charter to State charter conversion, when the form of ownership will also simultaneously be changed from stock to mutual or from mutual to stock, the conversion shall proceed initially as if it involves only a charter conversion, under G.S. 54B-31. After the association becomes a State association, the provisions of G.S. 54B-33 or 54B-34 shall govern the continuing conversion of the form of ownership of such newly converted association.

(c) The provisions of this section shall not apply to any simultaneous charter and ownership conversion accomplished in conjunction with a merger under the provisions of G.S. 54B-39. (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 9.)

**§ 54B-33. Conversion of mutual to stock association.**

(a) Any mutual association may convert from mutual to the stock form of ownership as provided in this section.

(b) A mutual association may apply to the Commissioner of Banks for permission to convert to a stock association and for certification of appropriate amendments to the association's certificate of incorporation. Upon receipt of an application to convert from mutual to stock form the Commissioner of Banks shall examine all facts connected with the requested conversion. The expenses and cost of such examination, monitoring and supervision shall be paid by the association applying for permission to convert.

(c) The association shall submit a plan of conversion as a part of the application to the Commissioner of Banks, and he may approve it with or without amendment, if it appears that:

- (1) After conversion the association will be in sound financial condition and will be soundly managed;
- (2) The conversion will not impair the capital of the association nor adversely affect the association's operations;

- (3) The conversion will be fair and equitable to the members of the association and no person whether member, employee or otherwise, will receive any inequitable gain or advantage by reason of the conversion;
- (4) The savings and loan services provided to the public by the association will not be adversely affected by the conversion;
- (5) The substance of the plan has been approved by a vote of two thirds of the board of directors of the association;
- (6) All shares of stock issued in connection with the conversion are offered first to the members of the association; except that any one or more tax qualified stock benefit plan may first purchase in the aggregate not more than ten percent (10%) of the total offering of shares;
- (7) All stock shall be offered to members of the association and others in prescribed amounts and otherwise pursuant to a formula and procedure which is fair and equitable and will be fairly disclosed to all interested persons;
- (8) The plan provides a statement as to whether stockholders shall have preemptive rights to acquire additional or treasury shares of the association and any provision limiting or denying said rights; and
- (9) The conversion shall not be complete until all stock offered in connection with the conversion has been subscribed.

If the Commissioner of Banks approves the plan, then the plan shall be submitted to the members as provided in subsection (d) of this section. If the Commissioner of Banks refuses to approve the plan, the Commissioner of Banks shall state the objections in writing and give the converting association an opportunity to amend the plan to obviate the objections or to appeal the Commissioner of Banks' decision to the Commission.

(d) After lawful notice to the members of the association and full and fair disclosure, the substance of the plan must be approved by a majority of the total votes which members of the association are eligible and entitled to cast. Such a vote by the members may be in person or by proxy. Following the vote of the members, the results of the vote certified by an appropriate officer of the association shall be filed with the Commissioner of Banks. The Commissioner of Banks shall then either approve or disapprove the requested conversion. After approval of the conversion, the Commissioner of Banks shall supervise and monitor the conversion process and he shall ensure that the conversion is conducted pursuant to law and the association's approved plan of conversion.

(e) Upon conversion of a mutual association to the stock form of ownership, the legal existence of the association shall not terminate but the converted stock association shall be a continuation of the mutual association. The conversion shall be deemed a mere change in identity or form of organization. All rights, liabilities, obligations, interest and relations of whatever kind of the mutual association shall continue and remain in the stock-owned association. All actions and legal proceedings to which the association was a party prior to conversion shall be unaffected by the conversion and proceed as if the conversion had not taken place.

(f) The Commissioner of Banks may promulgate such rules and regulations as may be necessary to govern conversions; provided, however, that such rules and regulations as may be promulgated by the Commissioner of Banks shall be equal to or exceed the requirements for conversion imposed by the rules and regulations governing conversions of federal chartered mutual savings and loan associations.

(g) Repealed by Session Laws 1987, c. 237, s. 3(d). (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 7; 1983, c. 144, s. 6; 1987, c. 237, s. 3; 1989 (Reg. Sess., 1990), c. 806, s. 2; 1991 (Reg. Sess., 1992), c. 829, s. 3; 2001-193, s. 16.)

**§ 54B-34. Conversion of stock associations to mutual associations.**

Any stock savings and loan association organized and operating under the provisions of this Chapter may, subject to the approval of the Commission, convert to a mutual savings and loan association under the provisions of this section. The Commissioner of Banks may promulgate rules and regulations governing the conversion of stock associations to mutual associations. Such rules and regulations shall include, but shall not be limited to requirements that:

- (1) The conversion neither impair the capital of the converting association nor adversely affect its operations;
- (2) The conversion shall be fair and equitable to all stockholders of the converting associations;
- (3) The public shall not be adversely affected by the conversion;
- (4) Conversion of an association shall be accomplished only pursuant to a plan approved by the Commissioner of Banks. Said plan must have been approved by an affirmative vote of two thirds of the members of the board of directors of the converting association, and only after a full and fair disclosure to the stockholders, by an affirmative vote [of] a majority of the total votes which stockholders of the association are eligible and entitled to cast;
- (5) The plan of conversion provides that:
  - a. Withdrawable accounts be issued in connection with the conversion to the stockholders of the converting association;
  - b. A uniform date be fixed for the determination of the stockholders to whom, and the amount to each stockholder of which, withdrawable accounts shall be made available;
  - c. Withdrawable accounts so made available to stockholders be based upon a fair and equitable formula approved by the Commissioner of Banks and fully and fairly disclosed to the stockholders of the converting association. (1981, c. 282, s. 3; 2001-193, s. 16.)

**§ 54B-34.1. Conversion to State association.**

(a) A savings bank or State or national bank, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a State association and for certification of appropriate amendments to its certificate of incorporation to effect the change. Upon receipt of an application to convert to a State association, the Commissioner of Banks shall examine all facts connected with the conversion. The depository institution applying for permission to convert shall pay all the expenses and costs of examination.

(b) The converting depository institution shall submit a plan of conversion as a part of the application to the Commissioner of Banks. The Commissioner of Banks may approve it with or without amendment. If the Commissioner of Banks approves the plan, then the plan shall be submitted to the members or stockholders as provided in subsection (c) of this section. If the Commissioner of Banks refuses to approve the plan, the Commissioner of Banks' objections shall be stated in writing and the converting depository institution shall be given an opportunity to

amend its plan to obviate the objections or to appeal the Commissioner of Banks' decision to the Commission.

(c) After lawful notice to the members or stockholders of the converting depository institution and full and fair disclosure, the substance of the plan shall be approved by a majority of the votes or shares present, in person or by proxy. Following the vote of the members or stockholders, the results of the vote certified by an appropriate officer of the converting depository institution shall be filed with the Commissioner of Banks. The Commissioner of Banks shall then either approve or disapprove the requested conversion to a State association. After approval of the conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted lawfully and under the approved plan of conversion. (1993, c. 163, s. 5; 2001-193, s. 16.)

#### **§ 54B-34.2. Conversion to bank.**

(a) A savings and loan association, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a bank, as defined under G.S. 53C-1-4(4), or to a national bank or other form of depository institution and for certification of appropriate amendments to its certificate of incorporation to effect the change. Upon receipt of an application to so convert, the Commissioner of Banks shall examine all facts connected with the conversion including receipt of approval of the converting institution's plan of conversion by other federal or state regulatory agencies having jurisdiction over the institution upon completion of its conversion. The depository institution applying for permission to convert shall pay all the expenses and costs of examination.

(b) The converting depository institution shall submit a plan of conversion as a part of the application to the Commissioner of Banks. The Commissioner of Banks may approve it with or without amendment. If the Commissioner of Banks approves the plan, then the plan shall be submitted to the members or stockholders as provided in subsection (c) of this section. If the Commissioner of Banks refuses to approve the plan, the Commissioner of Banks' objections shall be stated in writing and the converting depository institution shall be given an opportunity to amend its plan to obviate the objections or to appeal the Commissioner of Banks' decision to the Commission.

(c) After lawful notice to the members or stockholders of the converting depository institution and full and fair disclosure, the substance of the plan shall be approved by the members or the shareholders at a duly called and properly convened meeting of the members or shareholders. Following the meeting of the members or shareholders, the results of the vote certified by an appropriate officer of the converting depository institution shall be filed with the Commissioner of Banks. The Commissioner of Banks shall then either approve or disapprove the requested conversion to a bank, national bank, or other form of depository institution. After approval of the conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted lawfully and under the approved plan of conversion. (1993, c. 163, s. 5; 2001-193, s. 16; 2012-56, s. 37.)

#### **§ 54B-35. Merger of like savings and loan associations.**

Any two or more mutual associations or any two or more stock associations organized and operating, may merge or consolidate into a single association which may be either one of said merging associations, and the procedure to effect such merger shall be as follows:

- (1) The directors, or a majority of them, of such associations as desire to merge, may, at separate meetings, enter into a written agreement of merger signed by them and under the corporate seals of the respective associations, specifying each association to be merged and the association which is to receive into itself the merging association or associations, and prescribing the terms and conditions of the merger and the mode of carrying it into effect. Such merger agreement must provide the manner and basis of converting or exchanging the withdrawable accounts in the mutual association or associations so merged for withdrawable accounts of the same or a different class of the receiving association, or of converting or exchanging the stock in the stock association or associations so merged into stock or other securities or obligations of the receiving association. The merger agreement may provide for such other provisions with respect to the merger as appear necessary or desirable, or as the Commissioner of Banks may require by regulation to enable him to discharge his duties with respect to such merger.
- (2) Such merger agreement together with copies of the minutes of the meetings of the respective boards of directors verified by the secretaries of the respective associations shall be submitted to the Commissioner of Banks, who shall cause a careful investigation and examination to be made of the affairs of the associations proposing to merge, including a determination of their respective assets and liabilities. The reasonable cost and expenses of such examination shall be defrayed by each association so investigated and examined. If, as a result of such investigation, he shall conclude that the members or stockholders of each of the associations proposing to merge will be benefited thereby, he shall, in writing, approve same. If he deems that the proposed merger will not be in the interest of all members or stockholders of the associations so merging, he shall, in writing, disapprove the same. If he approves the merger agreement, then same shall be submitted, within 45 days after notice of such associations of such approval, to the members or stockholders of each of such association, as provided in the next subdivision. Such disapproval may be appealed by the association to the Commission.
- (3) A special meeting of the members or stockholders of each of the associations shall be held separately upon written notice of not less than 20 days to members or stockholders of each association. The notice shall specify the time, place, and purpose for the calling of the meeting. Notice may be given to members of mutual associations by one or more of the following methods: (i) personal service, (ii) postage prepaid mail to the last address of each member appearing upon the records of the association, or (iii) publication of notice at least once a week for four successive weeks in one or more newspapers published in the county or counties where each association has its principal or a branch office, or in a newspaper published in an adjoining county if none is published in the county. Notice may be given to stockholders by personal service or prepaid mail to the last address of each stockholder appearing upon the records of the



association. The Commissioner of Banks may approve notice to stockholders by publication in the same manner as provided to members of mutual associations. The secretary or other officer of the association shall make proof by affidavit at such meeting of the due service of the notice or call for said meeting.

- (4) At separate meetings of the members or stockholders of the respective associations, the members or stockholders may adopt, by an affirmative vote of a majority of the votes or shares present, in person or by proxy, a resolution to merge into a single association upon the terms of the merger agreement as shall have been agreed upon by the directors of the respective associations and as approved by the Commissioner of Banks. Upon the adoption of the resolution, a copy of the minutes of the proceedings of the meetings of the members or stockholders of the respective associations, certified by the president or vice-president and secretary or assistant secretary of the merging associations, shall be filed in the office of the Commissioner of Banks. Within 15 days after the receipt of a certified copy of the minutes of such meetings the Commissioner of Banks shall either approve or disapprove the proceedings for compliance with this section. If the proceedings are approved by him, he shall issue a certificate of his approval of the merger and send it to each of the associations. The certificate shall be filed and recorded in the office of the Secretary of State. When the certificate is so filed, the merger agreement shall take effect according to its terms and shall be binding upon all the members or stockholders of the associations merging, and it shall be deemed to be the act of merger of such constituent savings and loan associations under the laws of this State, and the certificate or certified copy thereof shall be evidence of the agreement and act of merger of the savings and loan associations and the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such merger. Within 60 days after its receipt from the Secretary of State, the certified copy of the certificate shall be filed with the register of deeds of the county or counties in which the respective associations so merged have recorded their original certificates of incorporation. Failure to so file shall only subject the association to a penalty of one hundred dollars (\$100.00) to be collected by the Secretary of State. The only fees that shall be collected in connection with the merger of the associations shall be filing and recording fees. If the Commissioner of Banks disapproves the proceedings, he shall mark the certified copies of the meetings in his office as disapproved and notify the associations to that effect. Such disapproval may be appealed by the association to the Commission.
- (5) Upon the merger of any association, as above provided, into another:
  - a. Its corporate existence shall be merged into that of the receiving association; and all and singular its rights, powers, privileges and franchises, and all of its property, including all right, title, interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it under an unmerged existence, shall

immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of such receiving association which shall have, hold and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held or enjoyed by the association or associations so merged; and such receiving association shall absorb fully and completely the association or associations so merged.

- b. Its rights, liabilities, obligations and relations to any person shall remain unchanged and the association into which it has been merged shall, by the merger, succeed to all the relations, obligations and liabilities as though it had itself assumed or incurred the same. No obligation or liability of a member, customer or stockholder in an association which is a party to the merger shall be affected by the merger, but obligations and liabilities shall continue as they existed before the merger, unless otherwise provided in the merger agreement.
  - c. A pending action or other judicial proceeding to which any association that shall be so merged is a party, shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or decree in the same manner as if the merger had not been made; or the receiving association may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such other association if the merger had not occurred.
- (6) Notwithstanding any other provision of this section, the Commissioner of Banks may waive any or all of the foregoing requirements upon finding that such waiver would be in the best interest of the members or stockholders of the merging associations. (1981, c. 282, s. 3; c. 670, s. 1; 1981 (Reg. Sess., 1982), c. 1238, s. 8; 1983, c. 144, s. 13; 1985, c. 659, s. 5; 1989, c. 76, s. 8; 2001-193, s. 16.)

**§ 54B-36. Merger of associations where ownership is converted.**

(a) Any two or more State mutual associations organized or operating may merge to form a single State stock association. The procedure to effect such a merger and conversion of ownership shall be as follows:

- (1) The merging associations shall merge (to form a mutual association), as provided under G.S. 54B-35.
- (2) The surviving association shall then convert to a stock association, as provided under G.S. 54B-33.

(b) Any two or more State stock associations organized or operating may merge to form a single mutual association. The procedure to effect such a merger and conversion of ownership shall be as follows:

- (1) The merging associations shall merge (to form a stock association), as provided under G.S. 54B-35.
- (2) The surviving association shall then convert to a mutual association, as provided under G.S. 54B-34.

(b1) Nothing in this section shall be construed to prevent a simultaneous merger-conversion in subsections (a) and (b) of this section.

(c) The Commissioner of Banks may promulgate rules and regulations to facilitate the transition from two or more associations to a single association under a new form of ownership. (1981, c. 282, s. 3; 1985, c. 659, s. 6; 2001-193, s. 16.)

#### **§ 54B-37. Merger of mutual and stock associations.**

(a) Any State mutual association and any State stock association, organized or operating, may merge to form a single stock association. The procedure to effect such a merger shall be as follows:

- (1) The mutual association involved shall convert separately to a stock association, as provided under G.S. 54B-33.
- (2) The two stock associations shall then merge to form a single stock association, as provided in G.S. 54B-35.

(b) Any State mutual association, and any State stock association organized or operating may merge to form a mutual association. The procedure to effect such merger shall be as follows:

- (1) The stock association involved shall convert separately to a mutual association, as provided under G.S. 54B-34.
- (2) The two mutual associations shall then merge to form a single mutual association, as provided in G.S. 54B-35.

(b1) Nothing in this section shall be construed to prevent a simultaneous conversion-merger in subsections (a) and (b) of this section.

(c) The Commissioner of Banks is hereby empowered to promulgate rules and regulations to facilitate such a merger of mutual with stock associations. (1981, c. 282, s. 3; 1985, c. 659, s. 7; 2001-193, s. 16.)

#### **§ 54B-37.1. Simultaneous conversion/merger.**

(a) The Commissioner of Banks shall not approve any application for the conversion of an association from mutual to stock form and its simultaneous (i) merger into a stock-owned savings institution or bank or (ii) acquisition by an operating financial institution holding company except as authorized in subsection (b) of this section. As used in this section, "simultaneous conversion/merger" shall mean a transaction in which the members of a mutual association proposing to convert to stock form are offered the opportunity to purchase (i) stock in the savings institution or bank into which it will be merged or (ii) stock in the holding company by which it will be acquired.

(b) The Commissioner of Banks shall approve a plan of simultaneous conversion/merger only if:

- (1) The transaction is proposed to address supervisory concerns of the Commissioner of Banks as to the safety and soundness of the mutual association; or
- (2) The mutual association:
  - a. Operates in a local market area in which long-term trends make reasonable growth, continued profitability, and safe and sound operation appear unlikely;
  - b. Furnishes evidence concerning its asset size, capital to assets ratio, and other factors, which may include a cost/benefit analysis, satisfactory to

the Commissioner of Banks that a simultaneous conversion/merger is more likely than remaining independent, merging with a mutual institution, converting to stock ownership, or other alternatives available to the association, to result in deposit, credit, and other financial services being provided within the local community safely and soundly on a long-term basis; and

- c. Furnishes evidence satisfactory to the Commissioner of Banks that no director, officer, or other person associated with the parties to the proposed transaction will receive benefits as a result of the simultaneous conversion/merger which in the aggregate exceed those permitted under federal regulations governing similar transactions.

(c) The Commissioner of Banks may adopt rules to govern simultaneous conversion/mergers, which rules shall contain restrictions or limitations which equal or exceed the limitations or restrictions contained in the rules of federal regulatory agencies governing similar transactions. No plan of a simultaneous conversion/merger shall be approved by the Commissioner of Banks unless it includes notification by first class mail to the members of the association to be acquired explaining the details of the plan including economic benefits or incentives to be received by officers and directors of the association, if any. Shares of stock in the acquiring entity purchased at a discount or otherwise by members of the association as part of the simultaneous conversion/merger shall be without limitation on subsequent sales by such members: provided, however, rules adopted by the Commissioner of Banks may place limitations of the sale of such stock purchased by officers and directors of the association. (1995, c. 479, s. 4; 2001-193, s. 16.)

**§ 54B-38.** Repealed by Session Laws 1985, c. 659, s. 8.

**§ 54B-39. Merger of federal with State associations.**

(a) Any two or more associations, when one or more is a State association and one or more is a federal association operating in North Carolina, may merge to form one association under either a State or federal charter.

(b) The Commissioner of Banks shall promulgate rules and regulations to facilitate the merger of federal and State associations. (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 10; 2001-193, s. 16.)

**§ 54B-40. Voluntary dissolution by directors.**

A State association may be voluntarily dissolved by a majority vote of the board of directors when substantially all of the assets have been sold for the purpose of terminating the business of the association or as provided in G.S. 55-14-01, and when a certificate of dissolution is recorded in the manner required by this Chapter for the recording of certificates of incorporation. (1981, c. 282, s. 3; 1989 (Reg. Sess., 1990), c. 806, s. 20; 1991, c. 707, s. 2.)

**§ 54B-41. Voluntary dissolution by stockholders or members.**

At any annual or special meeting called for such purpose, an association may, by an affirmative vote in person or by proxy of at least two thirds of the total number of shares or votes which all members or stockholders of the association are entitled to cast, resolve to dissolve and liquidate the association and adopt a plan of voluntary dissolution. Upon adoption of such resolution and plan of voluntary dissolution, the members or stockholders shall proceed to elect not more than

three liquidators who shall post bond as required by the Commissioner of Banks. The liquidators shall have full power to execute the plan; and the procedure thereafter shall be as follows:

- (1) A copy of the resolution certified by the president or secretary of the association, together with the minutes of the meeting of members or stockholders, the plan of liquidation, and an itemized statement of the association's assets and liabilities sworn to by a majority of its board of directors, shall be filed with the Commissioner of Banks. The minutes of the meeting of members or stockholders shall be certified by the president or secretary of the association, and shall set forth the notice given and the time of mailing thereof, the vote on the resolution and the total number of shares or votes which all members of the association were entitled to cast thereon, and the names of the liquidators elected.
- (2) If the Commissioner of Banks finds that the proceedings are in accordance with the provisions of this Chapter, and that the plan of liquidation is not unfair to any person affected, he shall attach his certificate of approval to the plan and shall forward one copy to the liquidators and one copy to the association's withdrawable account insurance corporation. Once the Commissioner of Banks has approved the resolution and the plan of liquidation it shall thereafter be unlawful for such association to accept any additional withdrawable accounts or additions to withdrawable accounts or make any additional loans, but all its income and receipts in excess of actual expenses of liquidation of the association shall be applied to the discharge of its liabilities.
- (3) The liquidator or liquidators so appointed shall be paid a reasonable compensation by the liquidating association subject to the approval of the Commissioner of Banks.
- (4) The plan shall become effective upon the recording of the Commissioner of Banks' certificate of approval in the manner required by this Chapter for the recording of the certificate of incorporation.
- (5) The liquidation of the association shall be subject to the supervision and examination of the Commissioner of Banks. (1981, c. 282, s. 3; 2001-193, s. 16.)

**§ 54B-42. Rules, regulations and reports of voluntary dissolution.**

(a) The Commissioner of Banks shall promulgate rules and regulations governing the dissolution and liquidation of State associations. These rules and regulations shall include, but not be limited to, provisions with respect to:

- (1) The protection and liquidation of assets;
- (2) The plan of liquidation;
- (3) Notice to file claims;
- (4) Claims of members;
- (5) Payments of claims and distribution; and
- (6) Final distribution and liquidation.

(b) Upon completion of liquidation, the liquidators shall file with the Commissioner of Banks a final report and accounting of the liquidation. The approval of the report by the Commissioner of Banks shall operate as a complete and final discharge of the liquidators, the board of directors, and each member or stockholder in connection with the liquidation of such

association. Upon approval of the report, the Commissioner of Banks shall issue a certificate of dissolution of the association and shall record same in the manner required by this Chapter for the recording of certificates of incorporation; and upon such recording, the dissolution shall be effective. (1981, c. 282, s. 3; 2001-193, s. 16.)

**§ 54B-43. Stock dividends.**

No dividend on stock shall be paid unless the association has the prior written approval of the Commissioner of Banks. (1981, c. 282, s. 3; 1983, c. 144, s. 7; 1989, c. 76, s. 9; 2001-193, s. 16.)

**§ 54B-44. Supervisory mergers, consolidations, conversions, and combination mergers and conversions.**

(a) Notwithstanding any other provision of this Chapter, in order to protect the public, including members, depositors and stockholders of a State association, the Commissioner of Banks, upon making a finding that a State association is unable to operate in a safe and sound manner, may authorize or require a short form merger, consolidation, conversion, or combination merger and conversion of the State association, or any other transaction, as to which the finding is made.

(b) The Commissioner of Banks shall promulgate rules and regulations to govern supervisory mergers, consolidations, conversions, and combination mergers and conversions authorized by this section. (1981, c. 670, s. 2; 1981 (Reg. Sess., 1982), c. 1238, s. 11; 1985, c. 659, s. 18; 1985 (Reg. Sess., 1986), c. 948, s. 2; 2001-193, s. 16.)

**§ 54B-45. Interim associations.**

(a) Article 2 of this Chapter shall not apply to applications for permission to organize an interim State association so long as the application is approved by the Commissioner of Banks.

(b) Preliminary approval of an application for permission to organize an interim State association shall be conditional upon the Commissioner of Banks' approval of an application to merge the interim association and an existing stock association or on the Commissioner of Banks' approval of any other transaction.

(c) The Commissioner of Banks shall promulgate rules and regulations to govern the formation of interim associations authorized by this section. (1985, c. 659, s. 9(b); 2001-193, s. 16.)

**§ 54B-46. Conversion of bank to stock association.**

(a) Any bank, as defined in G.S. 53C-1-4(4), may convert to a stock association as provided in this section.

(b) Any bank, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a stock association and for certification of appropriate amendments to the bank's certificate of incorporation to effect the conversion.

(c) The bank shall submit a plan of conversion as a part of the application to the Commissioner of Banks. The Commissioner of Banks may recommend approval of the plan of conversion with or without amendment. The Commissioner of Banks shall recommend approval of the plan of conversion if upon examination and investigation he finds that:

- (1) The resulting stock association will operate in a safe, sound, and prudent manner with adequate capital, liquidity, and earnings prospects;
- (2) The directors, officers, and other managerial officials of the bank are qualified by character and financial responsibility to control and operate in a legal and proper manner the stock association proposed to be formed as a result of the conversion;
- (3) The interest of the depositors, the creditors, and the public generally will not be jeopardized by the proposed conversion; and
- (4) The proposed name will not mislead the public as to the character or purpose of the resulting stock association, and the proposed name is not the same as one already adopted or appropriated by an existing association in this State or so similar as to be likely to mislead the public.

(d) Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the Commission which may approve, modify, or disapprove any action taken or recommended by the Commissioner of Banks. The Commission may promulgate rules to govern conversions undertaken pursuant to this section. The requirements for a converting bank shall be no more stringent than those provided by rule or regulation applicable to other FDIC-insured stock associations. The requirements for a converting bank shall be no less stringent than those provided by rule or regulation applicable to other FDIC-insured stock associations, except as may be allowed during transition periods permitted by subdivisions (e)(4) and (h)(2) of this section.

(e) In the absence of the promulgation of rules under subsection (d), the conditions to be met for approval of the application for conversion should include the following:

- (1) Condition. The applicant's general condition must reflect adequate capital, liquidity, reserves, earnings, and asset composition necessary for safe and sound operation of the resulting stock association.
- (2) Management. The management and the board of directors must be capable of supervising a sound stock association operation and overseeing the changes that must be accomplished in the conversion from a bank to a stock association.
- (3) Public Convenience. The Commission must determine that the conversion will have a positive impact on the convenience of the public and will not substantially reduce the services available to the public in the market area.
- (4) Transition. Within a reasonable time after the effective date of the conversion, the resulting stock association must divest itself of all assets and liabilities that do not conform to State banking law or rules. The length of this transition period shall be determined by the Commissioner of Banks and shall be specified when the application for conversion is approved.

In evaluating each of these conditions, the Commission shall consider a comparison of the relevant financial ratios of the applicant with the average ratios of North Carolina stock associations of similar asset size. The Commission may not approve a conversion where

the applicant presents an undue supervisory concern or has not been operated in a safe and sound manner.

(f) If the Commissioner of Banks approves the plan of conversion, then the bank shall submit the plan to the stockholders as provided in subsection (g). After approval of the plan of conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted pursuant to law and the bank's approved plan of conversion.

(g) After lawful notice to the stockholders of the bank and full and fair disclosure of the plan of conversion, the plan must be approved by a majority of the total votes that stockholders of the bank are eligible and entitled to cast. The vote by the stockholders may be in person or by proxy. Following the vote of the stockholders, the bank shall file with the Commissioner of Banks the results of the vote certified by an appropriate officer of the bank. The Commissioner of Banks shall approve the requested conversion and the bank shall file with the Secretary of State amended articles of incorporation with the certificate of the Commissioner of Banks attached. The conversion of the bank to a stock association shall be effective upon this filing.

(h) The Commissioner of Banks may authorize the resulting stock association to do the following:

- (1) Wind up any activities legally engaged in by the bank at the time of conversion but not permitted to stock associations.
- (2) Retain for a transitional period any assets and deposit liabilities legally held by the bank at the effective date of the conversion that may not be held by stock associations.

The length, terms, and conditions of the transitional periods under subdivisions (1) and (2) are subject to the discretion of the Commissioner of Banks, but may not exceed five years after the effective date of the conversion.

(i) Upon conversion of a bank to a stock association, the legal existence of the bank does not terminate, and the resulting stock association is a continuation of the bank. The conversion shall be a mere change in identity or form of organization. All rights, liabilities, obligations, interest, and relations of whatever kind of the bank shall continue and remain in the resulting stock association. Except as may be authorized during a transitional period by the Commissioner of Banks pursuant to subsection (h), a stock association resulting from the conversion of a bank shall have only those rights, powers, and duties which are authorized for stock associations by the laws of this State and the United States. All actions and legal proceedings to which the bank was a party prior to conversion shall be unaffected by the conversion and proceed as if the conversion had not taken place. (1989 (Reg. Sess., 1990), c. 845, s. 2; 2001-193, s. 16; 2012-56, s. 38.)

#### **§ 54B-47. Merger of banks and associations.**

(a) Any State association, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to merge with any bank, as defined in G.S. 53C-1-4(4).



(b) The State association shall submit a plan of merger as a part of the application to the Commissioner of Banks. The Commissioner of Banks may recommend approval of the plan of merger with or without amendment.

If he approves the plan, then the plan shall be submitted to the stockholders or members as provided in the next subsection. If he refuses to approve the plan, he shall state his objections in writing and give the merging association an opportunity to amend the plan to obviate such objections or to appeal his decision to the commission.

(c) After lawful notice to the stockholders or members of the association and full and fair disclosure, the substance of the plan must be approved by a majority of the total votes which stockholders or members of the association are eligible and entitled to cast. Such a vote by the stockholders or members may be in person or by proxy. Following the vote of the stockholders or members, the results of the vote certified by an appropriate officer of the association shall be filed with the Commissioner of Banks. The Commissioner of Banks shall then either approve or disapprove the requested merger.

(d) The Commissioner of Banks may promulgate such rules and regulations as may be necessary to govern such mergers. (1991, c. 707, s. 7; 2001-193, s. 16; 2012-56, s. 39.)

**§ 54B-48:** Reserved for future codification purposes.